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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,006	08/26/2003	Jean-Pierre Yquel	NONY 3.0-006	3343
530	7590	03/15/2005	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			BOMBERG, KENNETH	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/648,006

Applicant(s)

YQUEL, JEAN-PIERRE

Examiner

Kenneth Bomberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-11,20,22-24,29 and 30 is/are rejected.
- 7) ☒ Claim(s) 3-6,12-19,21 and 25-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 7, 9-11, 20, 22, 24, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Focht (3,169,677).

In Figs. 1-2, Focht teaches of:

A valve (3) for use with a pressurized receptacle (1) containing a fluid (10) to be dispensed therefrom, said valve comprising a housing (4,7) having an axis, and including an orifice (31) for dispensing said fluid, a shutter member (5) disposed in said housing, said shutter member movable along said axis under the action of gravity between a closed position (Fig. 2) in which said shutter member substantially closes said orifice when said valve is in a predetermined orientation and a dispensing position (Fig. 1) in which said shutter member releases said orifice, and at least one surface (inner wall of housing tube 4) adapted to prevent movement of said shutter member parallel to said axis over at least a portion of the path between said closed position and said dispensing position.

According to the claims.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focht (3,169,677) in view of Koukal (2,141,871).

Focht teaches of a valve substantially according to claims 2 and 8 but does not teach the surface (inside of tube 4) adapted to impart helical motion to the shutter member (5). Koukal teaches in figure 4 and page 2, lines 15-22, to provide a separate member (25) to impart helical motion to a shutter member (26) to thereby retard motion of the shutter member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the separate member (25) of Koukal in order to impart helical motion to a shutter member (5) to thereby further retard motion of the shutter member as taught by Koukal.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soffer et al. (2,831,618) in view of Focht (3,169,677).

Soffer et al. teaches of a rocking actuated valve substantially according to the claims, but does not teach of a shutter member and associated surface to prevent

movement of the shutter member parallel to the axis over at least a portion of its path. As explained with respect to claim 1 above, Focht teaches of a shutter member (5) and associated surface to prevent movement of the shutter member parallel to the axis over at least a portion of its path in order to dispense a predetermined quantity of product.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the shutter member and surface of Focht in the rocking actuated valve of Soffer et al. in order to dispense a predetermined quantity of product as taught by Focht.

#### ***Allowable Subject Matter***

6. Claims 3-6, 12-19, 21, and 25-28 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

7. Applicant's arguments filed 20 December 2004 have been fully considered but they are not persuasive.

Applicant argues that in claim 1, the axis is defined by the housing, and that the specification discloses the housing may be rectilinear or otherwise. Applicant further describes the education tube (4), valve body (7), and ball (5) of Focht, concluding that because the axis is defined as being that of the housing (4 & 7), the ball (5) follows the axis of the housing and therefore fails to meet the claim 1 limitations. Presumably, applicant is defining the Focht axis

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as being curved following the both the curved tube (4) and linear housing (7). Applicant's arguments hinge on the claim interpretation as it is applied to Focht, and particularly what can fairly be interpreted as the Focht housing axis. The term axis is a relatively broad term defined in Microsoft Bookshelf Dictionary as:

axis:

1. A straight line about which a body or geometric object rotates or may be conceived to rotate.
2. Mathematics. a. An unlimited line, half-line, or line segment serving to orient a space or a geometric object, especially a line about which the object is symmetric. b. A reference line from which distances or angles are measured in a coordinate system.
3. A center line to which parts of a structure or body may be referred.
4. An imaginary line to which elements of a work of art, such as a picture, are referred for measurement or symmetry.
5. Anatomy. a. The second cervical vertebra on which the head turns. b. Any of various central structures, such as the spinal column, or standard abstract lines used as a positional referent.
6. Botany. The main stem or central part about which organs or plant parts such as branches are arranged.
7. One of three mutually perpendicular lines that define the orientation of an aircraft, with one being along its direction of travel and the other two being perpendicular to the direction of travel.
8. A line through the optical center of a lens that is perpendicular to both its surfaces.
9. One of three or four imaginary lines used to define the faces of a crystal and the position of its atoms.
10. a. An alliance of powers, such as nations, to promote mutual interests and policies. b. Axis. The alliance of Germany and Italy in 1936, later including Japan and other nations, that opposed the Allies in World War II.

The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company.

In interpreting the claim, the broadest reasonable interpretation has been given to the claim in applying the Focht reference. Specifically, definition 3, "a center line to which parts of a structure or body may be referred.", is applied to Focht as the housing comprising the housing (7) and the tube (4) having an axis defined by the center line running through the housing (7) and the container (1). The tube (4) portion of the housing is curved as can be clearly seen in Fig. 1, and does not lie along or parallel to the housing centerline axis. As the shutter member (ball 5) travels along the tube, it is guided thereby in an arcuate path which is tangential rather than

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parallel with the centerline axis and which therefore meets the claim limitation of “and at least one surface adapted to prevent movement of said shutter member parallel to said axis over at least a portion of the path between said closed position and said dispensing position”. In contrast, Applicant’s interpretation is only one narrow interpretation, which is most favorable to applicant’s position, however, it is the broadest reasonable interpretation which governs in formulating a proper rejection.

Applicant further argues the propriety of the combination Koukal with that of Focht. Applicant concludes without addressing the rejection that motivation to combine the references is lacking, that the environment of Koukal is different that that of applicants device, that one would be guided away from combining the references, and that the rejection therefore depends upon hindsight reconstruction. With respect to the lack of motivation, the rejection clearly provides the motivation of:

It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the separate member (25) of Koukal in order to impart helical motion to a shutter member (5) to thereby further retard motion of the shutter member as taught by Koukal.

Which is not addressed by applicant. With respect to the environment, applicant, Focht, and Koukal are all directed to the same field of endeavor, specifically, obtaining a metered amount of fluid out of a container. The fact that pressure to move fluid through the container is provided by gravity in Koukal does not remove the reference from applicant’s field of endeavor. With respect to the teaching away, again, applicant, Focht, and Koukal all teach to guide the shutter member along a path to retard the closing. It is well excepted fact that the shortest distance between two points is a straight line, and therefore other paths (e.g. arcuate or spiral) results in a longer path.

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Consequently, in view of the explicit teachings of Koukal, motivation has not been obtained through impermissible hindsight.

Applicant's arguments with respect to claim 23, are based upon the alleged shortcomings of Focht and fully addressed above.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is 571-272-4922. The examiner can normally be reached on Monday, Tuesday, Thursday and alternative Fridays.




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.B.

  
KENNETH BOMBERG  
PRIMARY EXAMINER